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E-FILED ON: 3/8/10

Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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COMES NOW, the debtors DANNY R. FIDENES and MARIA LINDA FIDENES, by and through her attorney, Nathan R. Zeltzer, Esq. and opposes WELLS FARGO BANK's, (hereinafter "Movant") Motion for Relief From the Automatic Stay.

This opposition is brought pursuant to the Points and Authorities included herein, and on further oral argument of counsel as may be presented at the time of the hearing.

/s/Nathan R. Zeltzer,
Nathan R. Zeltzer
Attorney for Debtors

1 **I. FACTS**

2 The debtors filed their Chapter 13 bankruptcy on December 15, 2010. The filing of the
 3 bankruptcy was to stop collections action by their second lien holder on their home and reduce the
 4 outstanding obligations on their home by filing a Motion to Value Collateral on this property. The
 5 Plan has been confirmed and is pending confirmation.

6 This is the debtors family home where they reside. The debtor estimated that the house
 7 was worth approximately \$239,000.00 as listed on their schedule A. The approximate amount of the
 8 loans against the property total \$216,000.00.

9 **II. LAW AND ARGUMENT**

10 To obtain relief under 11 USC §362(d)(1) the court can grant relief for “cause”. In this
 11 case the Movant has not met this burden.

12 To obtain relief under 11 USC §362(d)(2) a creditor must make a **prim facie** (emphasis
 13 added) case that (1) the property over-encumbered, and (2) it is not necessary for an effective
 14 reorganization, see In re Elmore, 94 B.R. 670 (Bkrtcy C.D. Cal. 1988).

15 A debtor’s principal residence in a Ch. 13 case is virtually always necessary to an
 16 effective reorganization... if the home is not saved, the reorganization is not effective, Elmore at 673.

17 Debtors initiated a Mortgage Loan Modification review with the Movant at or around the
 18 time they filed their bankruptcy. Debtors were notified by the Movant’s representatives that if her
 19 loan was current she could not apply to have a modification processed. Thus, she stopped making
 20 payments to be able to try a modification of her 1st mortgage loan. Under the Home Affordable
 21 Modification Program (hereafter HAMP) the Movant cannot terminate a Modification review due to
 22 a bankruptcy filing. In this case the Movant is attempting to seek relief from Stay, without honoring
 23 the terms of HAMP which they are a party to. Debtors’ should be able to complete their
 24 Modification process to determine if they qualify for a Modification under the terms of HAMP. The
 25 debtors intend to keep their home, which is one of the reasons for filing bankruptcy.

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1 WHEREFORE, for the reasons aforementioned, the debtor asks that the Motion be
2 denied. In the alternative, if the Motion is not denied it is requested that the debtors be granted an
3 Adequate Protection Order to cure the two post-petition missed mortgage payments on their home. It
4 is further requested that the Movant allow the Debtors' to complete the HAMP modification request
5 that has been submitted to the Movant. Additionally, the debtors request any further relief that the
6 Court deems just and equitable.

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8 Submitted this 8 day March of, 2010

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10 /s/Nathan R. Zeltzer
11 Nathan R. Zeltzer, Esq.
12 Attorney for the Debtor

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